

**BEFORE THE QUEENSTOWN LAKES
DISTRICT COUNCIL**

IN THE MATTER of the Resource Management Act 1991 (the "Act")

AND

IN THE MATTER of the Queenstown Lakes District Proposed District Plan

SYNOPSIS OF LEGAL SUBMISSIONS FOR:

DJ and EJ Cassells, the Bulling Family, the Bennett Family, and M Lynch
(#503)
Friends of Wakatipu Gardens and Reserves
(#506)

Hearing Stream 03- Historic Heritage and Protected Trees- Chapters 26 and 32

28 June 2016

ANDERSON LLOYD
LAWYERS
QUEENSTOWN

Solicitor: M A Baker-Galloway/ R E Hill
(maree.baker-
galloway@andersonlloyd.co.nz/
rosie.hill@andersonlloyd.co.nz)

Level 2
13 Camp Street
PO Box 201
QUEENSTOWN 9348
DX ZP95010
Tel 03 450 0700
Fax 03 450 0799

1. Introduction

- 1.1 These legal submissions are presented on behalf of DJ and EJ Cassells, the Bulling Family, the Bennett Family, and M Lynch (#503) and Friends of Wakatipu Gardens and Reserves (#506) (the "**Submitters**") in respect of Chapter 26 of the Proposed District Plan ("**PDP**").
- 1.2 The Submitters were included in the submitter list for Hearing Stream 03 due to the relief sought in their original submissions to include the land area bounded by Park Street/Frankton Road and Hobart Street, and intersected by Brisbane Street (the "**Special Character Area**") as an area of special character within Chapter 26.
- 1.3 Upon review of Council's evidence and officer reports prepared in support of Hearing Stream 03, the Submitters wish to clarify their relief sought through chapter 26 and provide an overview of its intended relief to be sought in the upcoming residential and rezoning hearings.

2. Background and overview of the Submitters' case

- 2.1 The Submitters presented before the Hearings Panel in Hearing Stream 01B of the PDP. For the benefit of those Commissioners who were not present for that hearing, a summary of the case is as follows:
 - (a) The Special Character Area has important residential heritage values and exhibits special character which warrants a level of recognition and protection beyond that provided through the Medium Density Residential ("**MDR**") chapter.
 - (b) The distinctive character of the Area is driven by the combination of small-scale, residential homes that have grown organically since the area was first settled in the 1870s. In combination with low storey heights, smaller masses and naturally offset footprints and boundaries, the built character of the Park and Brisbane Street area reflects a lengthy development heritage that has almost vanished from Queenstown.
 - (c) The Special Character Area holds a distinctive residential character built on its surviving historic heritage that ultimately generates a strong sense of place for many of the residents who live there and call Queenstown their home.

- (d) The important values of the area should be better protected both at the strategic level, by acknowledgement generally of the worth of those values, and at the operational level, by providing residential provisions that give appropriate weight to protection of those values and character.
 - (e) The Friends of Wakatipu Gardens and Reserves ("**FOWGR**") is the pre-eminent community representative group which acts as a voice for the Wakatipu gardens and reserves areas.
 - (f) The PDP should provide for protection of its built environment as well as its natural environment so that sound planning outcomes are achieved across all rural, residential and other living zone chapters of the Plan. Quality urban design and built form are relevant factors to be provided for through Part 2 of the Act.
 - (g) It is unclear how the provisions notified in stage 1 of the PDP achieve the intent of integrated management as the split of stage 1 and 2 issues makes it impossible for submitters on the PDP to have a full picture of the planning regime at hand. Council has not addressed infrastructure and traffic implications as part of its proposed (significant) increases to densification which is of major concern to the Submitters.
- 2.2 The above summary can be read in further detail by considering the legal submissions on behalf of the Submitters dated 22 March 2016.
- 2.3 The Submitters sought wide relief in their original submissions to achieve the intended objective of appropriate recognition and protection of the Area of Special Character through the PDP. At the time of making those submissions, it was not anticipated that the hearings would be split into discreet hearing streams with separate commissioners and in particular, separate rezoning hearings.
- 2.4 The result of this process is that the Submitters have had to make a choice as to when to present a full suite of expert evidence to support their case. On that basis, heritage, planning, and other evidence is intended to be put before the Panel in the course of the residential Hearing Streams rather than in this Hearing.

3. **Identification of Special Character overlay within Chapter 26**

- 3.1 The original submissions of the Submitters sought the recognition of a Special Character Area as an overlay within Chapter 26 (Heritage) in order to protect the townscape/ landmark values of the area.
- 3.2 The Section 42A report prepared by Ms Jones in preparation for this Hearing identifies the potential ambiguity of that submission in light of the historic heritage precinct provisions in the chapter, at Rule 26.8.¹
- 3.3 The Submitters wish to clarify their intention is to provide for a special character area in some form through the PDP. One mechanism to do that might be through the Heritage Chapter, although it is acknowledged that a 'special character area' is not a term or feature which is currently provided in the current structure of Chapter 26.
- 3.4 Another mechanism would be to provide a special character overlap from within the residential provisions themselves.

4. **Structure of the PDP - Character of individual communities**

- 4.1 Goal 3.2.3 of the PDP states:

"A quality built environment taking into account the character of Individual communities".

- 4.2 Related Objective 3.2.3.2 states:

"Development is sympathetic to the District's cultural heritage values"

- 4.3 The only policy giving effect to that Objective, is Policy 3.2.3.2.1:

"Identify heritage items and ensure they are protected from inappropriate development"

- 4.4 In Hearing Stream 01B the Submitters sought the following policy to be inserted to the above suite of provisions:

"Identify special character and heritage areas and ensure they are protected from inappropriate development."

¹ Para 15.7 Section 42A report, Historic Heritage, 02 June 2016

- 4.5 The above has not been accepted in the Council's right of reply for Hearing Stream 01B and this presents an obvious gap in the policy framework. Goal 3.2.3 provides an overarching desired environmental outcome which is broader than historic heritage. It seeks to achieve an outcome of character and individualism which identifies communities. Lower order chapters do not provide for this Goal either, as evidenced by the Heritage Chapter which is predicated on the historic heritage definition in s2 RMA, rather than character.
- 4.6 Although it is acknowledged that the intent of Council is that 'goals' will not have a regulatory effect in the PDP, it is submitted that they must serve some legitimate purpose as a desired end state of affairs, or environmental outcome. At the residential hearings yet to come, the Submitters intend to further show that its 'Special Character' will fit well within the plan providing this (skeleton) policy framework already.

5. **Providing for historic heritage- s6(f) and 7(a)**

- 5.1 For the Commissioners assistance, the following analysis is provided on the jurisdiction of the RMA (and planning instruments prepared under the RMA) to provide for historic heritage.
- 5.2 *New Zealand Heavy Haulage Association Inc v Auckland Council* [2013] NZEnvC 145 provided an analysis on the overlap of sections 6(f) and 7 amenity and character within the heritage provisions of a change to the Auckland City District Plan: Isthmus Section. The Environment Court considered that the provisions in question which provided for special character and streetscape were predicated upon section 7 amenity values rather than a strict application of section 6(f) historic heritage.

"We make it very clear that special character recognised in PC163 derives from the streetscape, that is, the street view that one obtains of the relationship of the buildings to one another, and in terms of their subdivision pattern, shape, and like. A high quality replica building which was entirely in keeping with the original building style would provide the same character input, at least from a streetscape point of view. If it is in better condition than the original (i.e. not

rotting), then it may contribute to a higher level of amenity, accepting that the patina of age can also contribute to character".²

...

"We do not understand PC163 to be concerned with the internal integrity of a building or its originality. It is simply concerned with the contribution of the part of the building visible from the street to the special character and amenity of that area."³

- 5.3 In this case, the experts were in agreement that there had been significant changes in the inner city area through the continued upgrading of home values, and that the plan change was not about historic heritage, but was about maintaining amenity values by preserving character.⁴ The overall purpose of the plan change was to 'achieve the City's built legacy of pre-1940 buildings'; and sought to retain the special character of Auckland's older inner suburbs that are part of the city's legacy but not necessarily part of its historic heritage.
- 5.4 Upon considering the above broader aspects of the character to be provided for in the Isthmus section, the Court elected to amend terms such as heritage and historic and replace them with terms such as 'legacy', 'old' and 'built'.⁵ This it intended, would clarify that section 6(f) matters were not at play.
- 5.5 The above provides a useful analogy to the relief sought by the Submitters in the PDP. Goal 3.2.3 obviously provides for matters broader than historic heritage.

6. Conclusion

- 6.1 Queenstown is recognised as an international tourist destination and has been the focus of much recent commercial and investment development. It however increasingly lacks such a sense of place and has struggled to retain its built heritage that is a fundamental part of its historic story.

² *New Zealand Heavy Haulage Association Inc v Auckland Council* [2013] NZEnvC 145 at [60]

³ *Ibid*, at [64]

⁴ *Ibid*, at [23] – [24]

⁵ *Ibid*, at [84]

6.2 The Special Character Area adjacent to the gardens still retains some of that heritage built fabric. This provides a strong sense of place for its residents and those who pass through. Residents and visitors are able to benefit from and enjoy the ambiances and environmental amenity that the heritage character of the residential area brings. No area can or should remain static, as Park Street has demonstrated itself, but retaining areas with an identifiable character and broader heritage value is essential if Queenstown is to have any story to tell in the future.



M A Baker Galloway/ R E Hill

Counsel for DJ and EJ Cassells, Friends of Wakatipu Gardens and Reserves
28th June 2016